

## **REMARKS/ARGUMENTS**

Claims 1-77 are pending in the present application. In the above amendments, claims 73-77 have been amended. Applicants believe that the present application is now in condition for allowance, which prompt and favorable action is respectfully requested.

### ***Allowable Subject Matter***

Applicants thank the Examiner for the continued indication that claims 1-67 are allowed.

### ***Finality of the Office Action Mailed June 3, 2008***

Applicants respectfully request that the finality of the Office Action mailed June 3, 2008, be withdrawn. Office Action finality is addressed by MPEP § 706.07(a), wherein it states that a “second or . . . subsequent . . . [action] on the merits shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement*” submitted within applicable time frames (emphasis provided).

In the present case, the Office Action of June 3rd provides a new § 102 rejection for non-amended claims 68-72. The rejection cites US Patent Application Publication No. 2003/0016773 (Atungsiri). Applicants respectfully submit that the new ground of rejection using the Atungsiri reference is neither necessitated by Applicants’ amendment of the claims, nor is based on information submitted in an IDS within the time period anticipated by MPEP § 706.07(a). Applicants therefore respectfully request that the Examiner reconsider and withdraw the finality of the present Office Action.

***Claim Rejections – 35 USC § 101***

Claims 73-77 are rejected under 35 USC § 101 for being directed to non-statutory subject matter. Claims 73-77 are amended herein to recite the statutory subject matter of a computer-readable media.

MPEP § 2106.01 provides guidance on computer-readable media claims, stating that “a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory.” See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency).

Because amended claims 73-77 recite a computer-readable media having computer-executable code in compliance with MPEP § 2106.01, claims 73-77 are directed to statutory subject matter. The Examiner is therefore respectfully requested to withdraw the rejection under 35 USC § 101.

***Claim Rejections – 35 USC § 102***

Claims 68-72 are rejected under 35 USC § 102(e) as being anticipated by US Patent Application Publication No. 2003/0016773 (Atungsiri). This rejection is respectfully traversed.

Under 35 USC § 102, a reference applied as anticipating Applicants' claims must teach every element and every limitation. A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently in a single prior art reference. *See* MPEP §§ 706.02(a-i); 902; 2121 - 2138. *See also* Verdegaal Bros. v. Union Oil Co. of

California, 814 F.2d 628, 631 (Fed. Cir. 1987). In fact, the identical invention must be shown in as complete detail as contained in the claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Independent claim 68 includes the features of a processor configured to obtain a received sequence, to generate a correlated sequence, to generate an estimated communication channel impulse response, and to filter the estimated communication channel impulse response with a filter. At least these features are absent from the Atungsiri reference.

The June 3rd Office Action (at page 4) compares the above-noted features of claim 68 to Atungsiri's PAT (Pilot Assisted Tracker) output processor 210 (shown in Figure 6A). Atungsiri's PAT processor is not structurally configured as Applicants' claimed processor, however. Atungsiri's PAT processor is configured to locate the time of arrival (TOA) of a main path with respect to a current symbol synch time (CSST). *See* paragraph [0077]. As shown in Figure 6A, PAT processor 210 is configured to take an input from inverse fast Fourier transform 256, an input from the input line of slope-offset correction module 238, and an input from the symbol time adjustment estimator 206. PAT processor 210 is configured to provide an output to switch 208.

However, nowhere in Atungsiri (including paragraphs [0077] and [0102], and Figure 6A) is there any suggestion or disclosure of a processor configured as per Applicants' independent claim 68. Claim 68 is therefore believed to be allowable over the Atungsiri reference.

Claims 69-72 depend from claim 68, and by virtue of their collective dependency include all of the features of claim 68. Therefore, because of their collective dependency, claims 69-72 are believed to be allowable at least for the same reasons finding claim 68 allowable. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the § 102 rejection of claims 68-72.

### **CONCLUSION**

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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By: /Kenneth K. Vu/

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Kenneth K. Vu, Reg. No. 46,323  
(858) 658-5106

QUALCOMM Incorporated  
Attn: Patent Department  
5775 Morehouse Drive  
San Diego, California 92121-1714  
Telephone: (858) 658-5787  
Facsimile: (858) 658-2502